IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3844 OF 1996

1) Shivaji Dattu Patil, Age 36)
Occupation : Service)
R/o.Bazar Peth, Mane Galli)
At & Post & Taluka Shirol)
District : Kolhapur.)

2) Jaysing Dinkarrao Ghorapade)
3) Kalgond Malgonda Patil)
4) Ashok Dada Patil)
5) Bhujaonda Bhimgonda Patil)
6) Vilas Tukaram Patil)
7) Rangrao Maruti Sankpal)
8) Bhagwan Dhondiram Patil)
9) Abalal Abdul Jamadar)
10) Ramchandra Narayan Nikam)
11) Balasaheb Bhau Patil)
12) Satling Vishwanath Halwai)
13) Jayprakash Pandurang Bhosale)
14) Ashok Balu Suryawanshi)
15) Appasaheb Kondiba Khot)
16) Kalgobnda Basgonda Patil)
17) Bhausaheb Anna Sutar)
18) Mallappa Anna Chougule)
19) Dadasaheb Sadashiv Patil)
20) Appa Kamdeo Pujari)
21) Maruti Raghunath Patil)
22) Hasan Nooruddin Bargir)
23) Balaso Laxman Patil)
24) Ganapati Balu Mane)
25) Dalgonda Jingonda Patil)
26) Gulab Mhamulal Danwade)
27) Krishna Somanna Kattakari)
28) Shripati Ramu Khot)
29) Vasant Dadaso Jagdale)
30) Shankar Mahadeo Patil)
31) Vilas Wamanrao Aamble)
32) Laxman Shankar Tambire)
33) Bapu Anna Kore)
34) Laxman Pirappa Mhaishale)
35) Savata Appa Chougule)
36) Bhimrao Shankar Patil)
37) Gulab Dildar Makandar)
38) Shivaji Krishna Patil)
39) Ramchandra Shankar Nirmale)
40) Shabbirchand Chandabhai)
41) Sudhakar Baburao Relekar)
42) Prakash Maruti Budkar)
43) Ramchandra Bala Pujari)
44) Shrikant Lagmanna Koli)

45) Mallappa Shankar Sanade)

46) Vinod Vishnu Kulkarni)
47) Shrikant Namdeo Chinde)
48) Dattatraya Venkatesh Kulkarni)
49) Jaypal Addappa Madnaik).. Petitioners

Versus

1) Shri Datta Sahakari Sakhar Karkhana)
Ltd., Shirol, District : Kolhapur.)

2) Industrial Court, Kolhapur.).. Respondents

Mr.D.S.Sawant for the Petitioners.

Mr.K.S.Bapat with Mr.V.B.Rajure for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 17TH AUGUST 2004

ORAL JUDGMENT :

. This Petition is directed against the order dated 29th March 1996 passed by the Industrial Court, Kolhapur dismissing the Complaints filed by the Petitioners by a common judgment. The Industrial Court dismissed the Complaints by placing reliance on the judgment of the Apex Court in the case of *Shramik Utkarsha Sabha* vs. *Raymond Woollen Mills*, **1995 I CLR 607**.

2. The present Complaints have been filed under Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). Identical Complaints have been filed by all

the Petitioners. In paragraph 5(a) of the Complaint, it has been mentioned that the Complainant was employed as a Slip Boy from a particular date and he had put in continuous service from that period without any break or interruption. In paragraph 5(b) of the Complaint, it has been contended that the Complainant had put in 240 days of continuous service with the first Respondent Karkhana and, therefore, he was entitled to confirmation in the said post. It was also pleaded that although persons junior to the Complainants were made permanent, the Complainant was continued without being made permanent. In paragraph 5(c) of the Complaint, the contention is that the Complainant was employed on monthly wages for years together with an object of depriving the claim of the status and privileges of a permanent employee. The Complainant remained as a temporary workman thereby causing him financial loss. It was also contended that the Karkhana i.e. Respondent No.1 had violated the rule of "equal pay for equal work" and that under the Standing Orders applicable, the Complainant was entitled to be confirmed in service after putting many years of service. These pleadings appear to be substantially under Item 6 of Schedule IV of the Act.

3. The Industrial Court has rejected the Complaints in view of the judgment in the case of *Shramik Utkarsha Sabha* (supra). The Supreme Court has held that no Union

but a recognised Union can file a Complaint under Items 2 and 6 of Schedule IV of the Act. In the case of *Warden and Co. (India) Ltd., Bombay* vs. *Akhil Maharashtra Kamgar Union, Thane*, **2001 (2) Mh.L.J. 484**, the Division Bench of this Court has held that an unrecognised Union is not debarred from filing Complaint on behalf of the workmen in respect of a matter except under Items 2 and 6 of Schedule IV of the Act. The employer in the case of *Warden & Co.* (supra) was covered by the provisions of the Industrial Disputes Act, 1947 and not the Bombay Industrial Relations Act, 1948. In the case of *Tata Hydro Electric Power Supply Co. Ltd. and others* vs. *Narendra L.Mansukhani and others*, **1999 (2) Mh.L.J.57**, a learned Single Judge of this Court has taken the view that a Complaint relating to unfair labour practices under Items 9, 5 and 10 of Schedule IV of the Act can be filed by an individual workman since the right to file a Complaint is conferred under Section 28 of the Act. Similarly, in the case of *Rama Bala Kate and others* vs. *Walchandnagar Industries Ltd. and others*, **1996 I LLJ 713** and in the case of *Bajirao Rajaram Patil* vs. *Maharashtra State Co-operative Bank Ltd. and another*, **1997 (1) Mh.L.J. 50**, the learned Single Judges of this Court in both the judgments have held that the Complaints filed under Items other than Items 2 and 6 of the Act are maintainable even though they are filed by individual employees.

4. When Section 21(2) itself takes away the right of an individual employee to file a Complaint alleging unfair labour practices under Items 2 and 6 of Schedule IV of the Act, the Industrial Court cannot be faulted for dismissing the Complaints. There is no doubt that the Complaints have been filed substantially under Item 6 of Schedule IV of the Act. In the present case, after the Complaints were filed in January 1992, a letter was obtained from the recognised Union which is dated 9th November 1992 stating that it had no objection if Complaints were filed by the employees individually. This letter was produced on record. However, the consent obtained by the Petitioners from the Union after the filing of the Complaint would not solve the problem for the individual workman. Unless the workman is represented by those entitled to do so under Section 30 of the Bombay Act i.e. the Bombay Industrial Relations Act, 1948, the Complaint is not maintainable. That being the case, the Industrial Court cannot be faulted for the view that it has taken.

5. An affidavit has been filed by the Karkhana stating that some persons have been made seasonal permanent Slip Boys in the sugar factory. Some others have reached the age of superannuation, whereas 29 had resigned from service.

6. For the foregoing reasons, Petition fails. Rule discharged. No order as to costs.

7. Parties may be provided authenticated copy of this judgment.